Trusts of ships, express or implied, are however, rare, and the words seem to me to be capable also of a different and more practical meaning related not to title, legal or equitable, but to lawful possession and control with the use and benefit which are derived from them. If that meaning were right, a ship would be beneficially owned by a person who, whether he was the legal or equitable owner or not, lawfully had full possession and control of her, and, by virtue of such possession and control, had all the benefit and use of her which a legal or equitable owner would ordinarily have.

A ship which is demise chartered is an example of a ship which is possessed and controlled by a person not the legal or equitable owner in the way that I have described."

After giving various reasons supported by leading cases and authorities for his varying from Justice Hewson's definition, and laying down the proposition that an action in *rem* would lie against the vessel if an action in personam could be brought against the person who lawfully had full possession and control of her and had all the benefit and use of her, Justice Brandon concluded on page 150 *(ibid):*

"For the reasons which I have given I am of opinion that the Andrea Ursula was, at the date when this action was brought, beneficially owned as respects all the shares therein by Anglo-Med within the meaning of section 3(4) of the 1956 Act. I have already found that the plaintiffs' claim arises in connection with the Andrea Ursula and that Anglo-Med, being the persons liable on the claim in an action in personam were, when the cause of action arose, the charterers of the Andrea Ursula.

It follows that all the requirements of section 3(4) are fulfilled and the court has jurisdiction to entertain proceedings in rem against the Andrea Ursula in respect of the claim and to give the plaintiffs all such relief as is appropriate to such proceedings."

The nearest one can come to establishing the relationship between the defendants (owners) and Inter-Indo Shipping (S) Pte. Ltd. who contracted with the plaintiffs was that they were agents of the owners.

Therefore even if it is established, which to this stage has not been, that Inter-Indo Shipping (S) Pte. Ltd. are charterers by demise an action in rem against the "Sri Melati" will lie and the court has jurisdiction to entertain the proceedings. The writ is addressed to "The Owners of the vessel 'Sri Melati' now in the Port of Penang and all parties interested in her." The defendants of their own volition and in spite of owning only 3/400,000 shares and their close relationship with Inter-Indo Shipping (S) Pte. Ltd. chose to enter appearance under protest, with a view to having the writ struck off. In this connection, it would be of some interest to quote Brandon J. in The *"Andrea Ursula's"* case *supra* at page 150 last paragraph:

"I will tell you what is in my mind about that. It may be the reason why the parties interested in this ship have not appeared before me is because they relied on the decision in *The St. Merriel.* It seems to me that in those circumstances the court ought to ensure that there is a reasonable period of time within which, this judgment having been reported in 'Lloyd's List', the parties interested might consider their position and perhaps take a different course from that which they have taken up until now."

Several other points were raised by counsel for applicants and plaintiffs before me but for the purposes of the motion, the matter has been disposed of.

I would therefore dismiss the motion with costs.

Motion Dismissed.

Solicitors: *Allen & Gledhill; Chang & Vello.*

LEE CHOW MENG v. PUBLIC PROSECUTOR

[A.Cr.J. (Abdul Hamid J.) October 22, 1975]
[Kuala Lumpur — Selangor Criminal Appeal No. 64 of 1975]

Criminal Law and Procedure — Sentence — Judicial notice — Prevalence of offences involving firearms — Consecutive terms of imprisonment.

Evidence — Judicial notice — Common knowledge — Notorious fact.

This was an appeal against the sentences of (a) 7 years' imprisonment and five strokes (b) 10 years' imprisonment and six strokes and (c) 7 years' imprisonment imposed in the Sessions Court, Kuala Lumpur, for the offences of armed robbery, possession of arms and possession of ammunition. The sentences were ordered to run consecutively. The learned president in passing sentence took judicial notice of the prevalence of the commission of offences involving firearms in Kuala Lumpur.

Held: (1) the court is entitled to take judicial notice of the fact of the prevalence of the commission of offences involving firearms in Kuala Lumpur;

(2) in the circumstances of this case, the learned president was justified in ordering the sentences of imprisonment to run consecutively.

Cases referred to:-

(1) *Dennis* v. *White* [1916] 2 K.B. 1 at p. 6.

(2) *Ram Terak* v. *Selgram* [1944] A.C. 153.

(3) *Yong Pak Yong* v. *Public Prosecutor* [1959] M.L.J. 176.

CRIMINAL APPEAL.

Jag-Jit Singh for the appellant.

T.S. Sambanthamurthi (Deputy Public Prosecutor) for the respondent.

Abdul Hamid J.: The appellant was charged in the Sessions Court on the following charges: —

"(1) That you, on December 7, 1973 at about 2.15 p.m. at Jalan San Peng, Kuala Lumpur, in the State of Selangor, with three others still at large, in furtherance of a common intention as defined under section 34 of the Penal Code, robbed one S. Joseph, a Clerk with the Dewan Bandaraya, Kuala Lumpur, of cash $71.820.31 and at the time of committing the said robbery used deadly weapons, to wit 'Four Revolvers' and that you have thereby committed an offence punishable under section 392 of the Penal Code, to be read in conjunction with section 397 of the Penal Code.

(2) That you on April 11, 1975 at about 11.15 p.m. at Flat No. B.6/2, Khoon Lin Court, off Pasar Road, in the city of Kuala Lumpur, not being a person subject to the provisions of section 6 of the Arms Act No. 21/60, did have unlawful possession of a firearm, to wit, one 'STAR 7.65 m.m. Automatic Pistol in contravention of the provisions of section 3(1) of the said Act and that you have thereby committed an offence punishable under section 8 of the Firearms (Increased Penalties) (Amendment) Act No. 256 of 1974.

(3) That you on April 11, 1975 at about 11.15 p.m. at Flat No. B. 6/2, Khoon Lin Court, off Pasar Road, in the city of Kuala Lumpur, not being a person subjected to the provisions of section 6 of the Arms Act No. 21/1960, did have in your possession 30 rounds of 7.65 m.m. ammunition in contravention of the provision of section 3(1) of the said Act and that you have thereby committed an offence punishable under section 9(a) of the Arms Act No. 21/1960."

The learned president convicted the appellant on all the charges and sentenced him to — (a) seven years' imprisonment and five strokes; (b) 10 years' imprisonment and six strokes and (c) seven years' imprisonment respectively.

The appeal is against sentence. The main grounds upon which the appellant is seeking that the sentences passed by the learned president be reversed are that the learned president erred in law — (1) when she allowed herself to be influenced by the alleged increase of late of armed robberies in the city when no such evidence was ever led by witness or witnesses for the prosecution on record; (2) when she took judicial notice of the fact that — "Hardly a day has passed without such incidents being reported in the newspapers when there was no evidence on record to support such a finding;" and (3) in failing to order that the sentences imposed in the second charge of Arrest Case No. 17/1975 to run concurrently.

In my judgment there is absolutely no merit in this appeal. It is evident from the learned president's grounds of judgment that she took into account two main factors in considering the appropriate sentences to be imposed. In the first place, the learned president took the view that it was in the public interest that deterrent sentences be imposed. In the court below the prosecuting officer submitted that there were 677 robberies within a period of four months in Kuala Lumpur alone and half of them were armed robberies. The learned president evidently took this fact into account. It is true that the learned president was somewhat influenced by this fact. To my mind it is a matter of common knowledge and a notorious fact that there have been of late an increase in armed robberies. The learned president, I think, acted correctly when she took this fact into account and there is therefore absolutely no valid ground to say that she had erred in law.

What matters constitute common and general knowledge may be gathered from *Sarkar* on Evidence, 12th edition, where the learned author, speaking of common knowledge, at page 575, said —

"The matter of which a court will take judicial notice must be a subject of common and general knowledge. In other words, judicial knowledge of facts is measured by general knowledge of the same facts. A fact is said to be generally recognised or known when its existence or operation is accepted by the public without qualification or contention. The test is whether sufficient notoriety attaches to the fact involved as to make it proper to assume its existence without proof."

In the light of the passage cited it is clear that the court may properly ask itself this question: is it not a fact well recognised that in Kuala Lumpur there has been of late, an increase in the commission of offences involving firearms? We are not concerned with absolute acceptance of the existence of certain knowledge. The rule of evidence speaks of general recognition and not total recognition in the sense that there is a general acceptance without qualification or contention as opposed to total acceptance.

Sarkar on the same page has something to say concerning the notorious facts —

"Judicial notice is taken of various facts which are familiar to any judicial tribunal by their universal notoriety or regular recurrence in the ordinary course of nature or business. As judges must bring to the consideration of questions they have to decide their knowledge of the common affairs of life, it is not necessary on the trial of an action to give formal evidence of matters with which men of ordinary intelligence are acquainted...."

Matters which the court may take judicial notice are far from exhaustive. Courts have even taken judicial notice that streets in London are crowded and dangerous — (*Dennis* v. *White*[1]); and of world-wide economic depression — (*Ram Tarak* v. *Selgram*[2]).

In this connection let me also refer to the case cited by Encik T.S. Sambanthamurthi (*Yong Pak Yong* v. *Public Prosecutor*[3]) where Good J. (as he then was) said at page 177 —

"In dealing with a matter of sentence as distinct from considering whether a person ought to be convicted or not of the offence, I think that the courts are entitled to take judicial notice of what is notorious, of what everybody knows. Indeed, I came across recently in an entirely different connection a case in which the Privy Council took judicial notice of the existence of a particular class of contracts in India."

Further on His Lordship said —

"Similarly we members of the judiciary sitting in these courts cannot avoid acquiring a very considerable knowledge, from the cases that come before us, of the activities and the prevalence of secret societies and, in particular, in this town of Ipoh."

Similarly I would say that it is common knowledge that, of late, commission of offences involving fire-arms has been prevalent in Kuala Lumpur and I think the court is entitled to take judicial notice of that fact.

As regards the last ground Encik Jag-Jit Singh counsel for the appellant urged me to allow the appeal in regard to the sentences passed in Arrest Case No. 17/1975, that the court should order the sentences of imprisonment on those two charges to be made concurrent and not consecutive. In my view, the court may, in appropriate cases, order the sentences of imprisonment to run consecutively. The prime consideration, to my mind, is the circumstances attendant on each particular case. I think this case is one where imprisonment sentences should be made to run consecutively. On consideration I hold that the sentences passed were appropriate having regard to the nature of the offences with which the appellant was convicted and indeed by imposing a long term of imprisonment public interest will be served. For these reasons I would dismiss the appeal.

Appeal dismissed.

Solicitors: *Jag-Jit Singh & Co.*